

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE ESTATE OF EUEL F. CARNES, JR.,

Plaintiff,

v.

No.1:92CV312-S-D

KENTUCKY CENTRAL LIFE INSURANCE
COMPANY, et al.,

Defendants.

MEMORANDUM OPINION

This cause is before the court upon appeal by the plaintiff of the Judgment of Dismissal entered by the Magistrate Judge as to Defendants Patricia Nelson and The Bank of Red Bay.

The plaintiff originally filed this cause of action in the Circuit Court of Itawamba County, Mississippi on September 21, 1992, naming as the sole defendant Kentucky Central Life Insurance Company.¹ On February 25, 1993, and after the cause was removed to this court on the basis of diversity, Kentucky Central was placed in receivership by the Kentucky Commissioner of Insurance. In September of 1993, this court entered an order staying all proceedings pending adjudication of

¹The plaintiff's decedent applied and paid for credit life on May 25, 1991, when he obtained a loan from The Bank of Red Bay in the amount of \$24,840. Bank employee Patricia Nelson assisted Carnes in the process. On July 25, 1991, Euel Carnes, Jr. died. On August 6, 1991, Kentucky Central rejected Carnes' application and returned his application fee of \$1,840.

the plaintiff's claim against the insurance company by the Kentucky Commissioner of Insurance.² The plaintiff filed a motion to amend its complaint on August 25, 1994, to add defendants Patricia Nelson, The Bank of Red Bay, and the Assurance Group. After the court granted the plaintiff's motion on December 22, 1994, the plaintiff submitted the amended complaint on January 6, 1995. Defendants Nelson and the Bank filed a motion to dismiss based upon the expiration of the statute of limitations. The Magistrate Judge granted the defendants' motion and dismissed the claims against them.³

The plaintiff argues that the amended complaint relates back to the date of the original filing pursuant to Federal Rule of Civil Procedure 15(c) which states:

An amendment of a pleading relates back to the date of the original pleading when

...

(3) the amendment changes the party or the naming of the party⁴ against whom a claim is asserted if the foregoing provision (2)⁵ is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, **but for a mistake** concerning the identity

²In the September 8, 1993 order, the plaintiff was directed to inform this court of the progression of its claim before the Kentucky court.

³The parties agree that the three-year statute applies to the claims. The Magistrate Judge determined that the cause of action accrued on August 6, 1991, the date the application was rejected, and, therefore, the filing of the motion to amend on August 25, 1994, was outside the statute.

⁴"Changes" as construed in this provision is given liberal application so that if the requirements are satisfied, additional parties may be named in the amended complaint. 6A Charles A. Wright, Arthur R. Miller, and Mary Kay Kane, *Federal Practice and Procedure* § 1498 (1990).

⁵Rule 15(c)(2) requires that the claim or defense asserted in the amended pleading arise out of the same nucleus of facts set forth in the original pleading.

of the proper party, the action would have been brought against the party.

While the plaintiff persuasively argues the notice requirement and the “same set of operative facts” requirement, the plaintiff neglects to argue that a mistake lead to the failure to name the proper parties. As the court interprets the rule, at the very least, imputed knowledge of a mistake on the part of the newly named parties in the amended complaint is an integral part of the relation back doctrine. Therefore, this court finds that the naming of the new defendants in the amended complaint does not relate back to the original filing.

Alternatively, the plaintiff argues that rulings by the Kentucky court and this court tolled the running of the statute of limitations. Because the courts stayed further action pending a determination by the Kentucky Commissioner of Insurance, the plaintiff believes it was under a disability in accordance with Mississippi Code section 15-1-57 and, therefore, could not bring suit against the new defendants. The Mississippi statute at issue provides a tolling of the statute of limitations when “any court in this state” prohibits by order the prosecuting of a cause. Miss. Code § 15-1-57. In interpreting its “saving statute,” the Mississippi Supreme Court holds that § 15-1-57 only applies where a plaintiff is personally prohibited or restrained from bringing suit. *Grant v. State*, 686 So.2d 1078 (Miss. 1996), *quoting White v. White*, 601 So.2d 864, 865 (Miss.1992). The plaintiff was not at any time prohibited by the Kentucky court or the district court in bringing suit against Patricia Nelson and The Bank of Red Bay. The stay applied to the insurance company and not to any unnamed defendants.

The original filing clearly identifies the newly named defendants and alleges their participation in the alleged tortious conduct. That plaintiff’s counsel may have made a tactical decision not to initially name Patricia Nelson and The Bank of Red Bay does not rise to the level of

a mistake or a disability under the saving statute. Therefore, this court finds that the Judgment of Dismissal was correctly entered by the Magistrate Judge as to defendants Patricia Nelson and The Bank of Red Bay and it is affirmed.

A judgment shall be issued contemporaneously.

This the _____ day of April, 1998.

CHIEF JUDGE